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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/853,104	05/10/2001	James R. Richard	01478-P0006B	5802

24126 7590 06/04/2003

ST. ONGE STEWARD JOHNSTON & REENS, LLC  
986 BEDFORD STREET  
STAMFORD, CT 06905-5619

EXAMINER

HOEY, ALISSA L

ART UNIT	PAPER NUMBER
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3765

DATE MAILED: 06/04/2003 12

Please find below and/or attached an Office communication concerning this application or proceeding.

N.K.

<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	09/853,104		RICHARD, JAMES R.	
	<b>Examiner</b>		<b>Art Unit</b>	
	Alissa L. Hoey		3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 April 2003.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson et al. (US 5,817,114) in view of DePierro et al. (US 5,938,673).

Anderson et al. provides a tongue cleaning device adapted to be pressed against a top surface of a user's mouth (column 2, lines 1-13). An elongated member integrally formed of a thin, flexible plastic material having a handle and a head portion (column 3, lines 6-14). The head portion having a width greater than a width of the handle portion (figures 8 and 9). The head portion is in contact with the top surface of a user's mouth and a cleaning portion attached to the head portion of the elongated member (figures 1-7, identifiers 20, 22, 24 and 26). The cleaning portion comprising a loop portion of a hook and loop fastening system with an antiseptic or antimicrobial compound carried in the cleaning portion (column 3, lines 15-21). The head portion of the elongated member is pressed with the tongue against the top surface to conform the head portion to the shape thereof (column 2, lines 31-36). The handle portion is of a deformable material for deforming around a user's teeth (figure 8 and 9, identifier 30: see column 3, lines 6-14).

However, Anderson et al. fails to teach the tongue cleaning device sized and shaped to fit within the roof of a user's mouth.

DePierro et al. provides a tongue cleaning device sized and shaped to fit within the roof of a user's mouth (figures 1-4: column 2, lines 7-36).

It would have been obvious to have provided the tongue cleaning device of Anderson et al. with the device of DePierro et al. sized and shaped to fit within the roof of the user's mouth, since a the device of Anderson sized to fit within the roof of a user's mouth would provide greater movement ability of the device within the mouth to clean all areas of the tongue.

### ***Response to Arguments***

3. Applicant's arguments with respect to claims 1-12 have been considered but are moot in view of the new ground(s) of rejection based on amendment of 04/21/03.

### ***Conclusion***

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

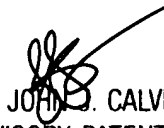
Art Unit: 3765

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alissa L. Hoey whose telephone number is (703) 308-6094. The examiner can normally be reached on M-F (8:00-5:30) Second Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on (703) 305-1025. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-0758 for regular communications and (703) 308-0758 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0861.

Alh  
June 2, 2003

  
JOHN S. CALVERT  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700



UNITED STATES PATENT AND TRADEMARK OFFICE

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EXAMINER

HOEY, ALISSA L

ART UNIT

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DATE MAILED: 01/30/2003

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Application No.

09/853,104

Applicant(s)

RICHARD, JAMES R.

Examiner

Alissa L. Hoey

Art Unit

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## Status

- 1) ☒ Responsive to communication(s) filed on 06 January 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
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## Priority under 35 U.S.C. §§ 119 and 120

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- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Withdrawal of Final Office Action***

Final Office Action mailed out 01/15/03 has been withdrawn. Non-Final office action is in response to RCE of 12/20/02.

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Anderson et al. (US 5,817,114).

Anderson et al. provides a tongue cleaning device adapted to be pressed against a top surface of a user's mouth (column 2, lines 1-13). An elongated member integrally formed of a thin, flexible plastic material having a handle and a head portion (column 3, lines 6-14). The head portion having a width greater than a width of the handle portion (figures 8 and 9). The head portion is in contact with the top surface of a user's mouth and a cleaning portion attached to the head portion of the elongated member (figures 1-7, identifiers 20, 22, 24 and 26). The cleaning portion comprising a loop portion of a hook and loop fastening system with an antiseptic or antimicrobial compound carried in the cleaning portion (column 3, lines 15-21). The head portion of the elongated member is pressed with the tongue against the top surface to conform the head portion to the



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shape thereof (column 2, lines 31-36). The handle portion is of a deformable material for deforming around a user's teeth (figure 8 and 9, identifier 30).

**Conclusion**


3. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Andrews, Sr., Choy-Maldonado, McNeill, Barrett and Caldwell et al. are all cited to show closely related tongue cleaning devices.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alissa L. Hoey whose telephone number is (703) 308-6094. The examiner can normally be reached on M-F (8:00-5:30) Second Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on (703) 305-1025. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-0758 for regular communications and (703) 308-0758 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0861.

Alh  
January 28, 2003

  
JOHN U. CALVERT  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700